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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-765

Filed: 21 April 2020

Harnett County, No. 06 CRS 51459

STATE OF NORTH CAROLINA

v.

CHRISTY LYNN FORE

Appeal by Defendant from Order entered 19 March 2019 by Judge C. Winston Gilchrist in Harnett County Superior Court. Heard in the Court of Appeals 5 February 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Brittany Edwards, for the State.*

*Appellate Defender Glenn Gerding and Assistant Appellate Defender Nicholas C. Woomer-Deters for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Christy Lynn Fore (Defendant) appeals from an Order Denying Petition (Order) entered on 19 March 2019, denying her Motion for Termination of Registration Requirements. The Record before us reflects the following:

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On 17 April 2006, Defendant was indicted for Statutory Rape and Taking Indecent Liberties with Children in Harnett County, North Carolina. On 12 May 2006, Defendant entered a plea of guilty to Indecent Liberties with a Child. Pursuant to Defendant's plea agreement, the State dismissed the charge of Statutory Rape.

The trial court ordered a suspended sentence of twenty-one to twenty-six months with twenty-four months of supervised probation. Defendant was required to register as a sex offender. As a condition of her probation, Defendant agreed to submit to warrantless searches by a probation officer for stolen goods, controlled substances, and contraband. Defendant also agreed not to possess controlled substances and to submit to drug and alcohol screenings. On 20 March 2007, the chief probation officer in Harnett County submitted a Violation Report alleging Defendant was in violation of probation for testing positive for controlled substances, absconding, failing to complete required community service, failing to report for probation, and failing to attend her court-ordered sex offender control program.

On 11 October 2007, the trial court found Defendant violated the terms of her probation and activated her suspended sentence. On 6 March 2009, Defendant was released from prison. Then, on 6 April 2010, Defendant was arrested and charged with Felony Registration Violation. Defendant pleaded guilty to Misdemeanor Obstruction of Justice on 28 July 2010.

On 18 October 2018, Defendant filed a Motion for Termination of Registration Requirements (Petition) pursuant to N.C. Gen. Stat. § 14-208.12A.<sup>1</sup> On 25 February 2019, the trial court conducted a hearing on Defendant's Petition and on 19 March 2019 entered an Order Denying Petition.<sup>2</sup> The trial court's Order concluded:

2. The Defendant is not entitled to be removed from the sex offender registry pursuant to N.C. Gen. Stat. [§] 14-208.12A in that she has not complied with federal standards applicable to the termination of a registration requirement in that she did not successfully complete her period of supervised probation and, in fact, her probation was revoked.

3. Finally, the Court is not satisfied, based upon the evidence presented and lack thereof, that the petitioner is not a current or potential threat to public safety, regardless of whether the burden of proof for this issue lies with the Defendant or the State.

In support of these Conclusions, the trial court found:

1. The Defendant was convicted in Harnett County Superior Court of indecent liberties with a child on May 12, 2006. She was sentenced to 21 months minimum and 26 months maximum. This sentence was suspended and the defendant was placed on probation. The parties agree, and the Court so finds, this is a Tier 1 offense under federal SOR laws.

2. On October 11, 2007 the Defendant's probation was revoked based upon violations of her probation that includ[ed] absconding, failing to report to her probation officer, failing drug tests and failing to complete community service.

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<sup>1</sup> The trial court's Order refers to Defendant's Motion for Termination as a Petition. For consistency, we do also.

<sup>2</sup> The trial court purports to enter its Order "nunc pro tunc" as to 27 February 2019. Designating this Order "nunc pro tunc" is not a proper application of nunc pro tunc and does not retroactively enter the Order as to 27 February 2019. *See Elmore v. Elmore*, 67 N.C. App. 661, 666, 313 S.E.2d 904, 907-08 (1984).

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3. The Defendant's initial date of sex offender registration was November 27, 2006. Since that time she has remained on the registry. She was charged with and arrested for a felony registration violation on April 6, 2010 and pled guilty to misdemeanor obstruction of justice on July 28, 2010. She has not been convicted of any offense which carried a sentence of one year or more.

4. The Defendant testified that she had a drug problem in the past but not any longer.

Defendant timely filed Notice of Appeal on 28 March 2019.

**Issue**

The sole issue on appeal is whether the trial court abused its discretion in denying Defendant's Petition requesting removal from the sex offender registry under N.C. Gen. Stat. § 14-208.12A.

**Analysis**

"[T]he ultimate decision of whether to terminate a sex offender's registration requirement still lies in the trial court's discretion." *In re Hamilton*, 220 N.C. App. 350, 359, 725 S.E.2d 393, 399 (2012) (citing N.C. Gen. Stat. §14-208.12A(a1)). "Thus, after making findings of fact supported by competent evidence on each issue raised in the petition, the trial court is then free to employ its discretion in reaching its conclusion of law whether Petitioner is entitled to the relief he requests." *Id.* "A trial court abuses its discretion if its determination is manifestly unsupported by reason and is so arbitrary that it could not have been the result of a reasoned decision." *State*

*v. Lasiter*, 361 N.C. 299, 301-02, 643 S.E.2d 909, 911 (2007) (citation and quotation marks omitted).

Defendant petitioned the trial court for early termination of registration requirement under N.C. Gen. Stat. § 14-208.12A, which provides:

(a) Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court to terminate the 30-year registration requirement if the person has not been convicted of a subsequent offense requiring registration under this Article.

. . . .

(a1) The court may grant the relief if:

(1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,

(2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and

(3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

N.C. Gen. Stat. § 14-208.12A (2019).

Here, Defendant contends the trial court abused its discretion in denying her Petition on two grounds. First, Defendant argues the trial court erred because Defendant complied with the federal requirements, arguing the ten-year “clean record” period commenced upon her release from prison. Second, Defendant contends

the trial court abused its discretion because the trial court's conclusion it "is not satisfied, based upon the evidence presented and lack thereof, that the petitioner is not a current or potential threat to public safety" was not supported by the trial court's Findings.

The requirements of Section 14-208.12A(a1), however, are cumulative, therefore Defendant must show compliance with each of the three criterion. *See In re Bethea*, 255 N.C. App. 749, 755, 806 S.E.2d 677, 681 (2017). In turn, where, as here, the trial court concluded Defendant failed to meet two of the three criteria, in order to prevail on appeal, Defendant must establish the trial court erred in its conclusions as to both criteria. *Id.* In the present case, we conclude the trial court did not abuse its discretion in concluding it was not satisfied Defendant was not a current or potential threat to public safety. Consequently, we do not address Defendant's remaining argument.

Defendant contends the trial court's Conclusion it "is not satisfied . . . the [Defendant] is not a current or potential threat to public safety[ ]" is not supported by the trial court's Findings. However, Defendant does not challenge any specific Finding of Fact. Instead, Defendant argues the trial court's Findings only address Defendant's compliance with state and federal law and therefore do not specifically support the trial court's conclusion it was "not satisfied . . . Defendant is not a current or potential threat to public safety[.]"

“Findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if there is evidence to the contrary.” *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) (alterations, citation, and quotation marks omitted). In actions tried without a jury, as the case *sub judice*, the “court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” N.C. Gen. Stat. § 1A-1, Rule 52 (2019). In the present case, the Violation Report contained in the Record reflects Defendant violated her probation by failing drug tests, absconding, failing to complete required community service, failing to attend court-ordered sex offender control program, and failing to report as required to her probation officer. The Record further reflects that after her probation violation hearing, the trial court revoked Defendant’s probation and activated Defendant’s suspended sentence. Furthermore, at Defendant’s Petition hearing, Defendant admitted at the time of her probation she struggled with drugs and alcohol. Thus, the trial court’s Findings 2, 3, and 4 are all supported by competent evidence in the Record.

“[A]fter making findings of fact supported by competent evidence on each issue raised in the petition, the trial court is then free to employ its discretion in reaching its conclusion of law whether [Defendant] is entitled to the relief [s]he requests.” *In re Hamilton*, 220 N.C. App. at 359, 725 S.E.2d at 399. Here, the trial court exercised

its discretion under Section 14-208.12A(a1)(3) and denied Defendant's Petition. The trial court's Findings—that Defendant violated her probation by absconding, failing to report to her probation officer, failing drug tests, and failing to complete community service and that Defendant was arrested for Felony Registration Violation, for which she pleaded guilty to Misdemeanor Obstruction of Justice—support the trial court's discretionary conclusion it “is not satisfied, based upon the evidence presented and lack thereof, that [Defendant] is not a current or potential threat to public safety[.]” The trial court's determination is not “so arbitrary that it could not have been the result of a reasoned decision.” *Lasiter*, 361 N.C. at 301-02, 643 S.E.2d at 911 (citation and quotation marks omitted). Thus, the trial court did not abuse its discretion when it denied Defendant's Petition on this basis.

Therefore, because the trial court need only deny Defendant's Petition on one ground under Section 14-208.12A, *see In re Bethea*, 255 N.C. App. at 755, 806 S.E.2d at 681 (“The required findings [in Section 14-208.12A] are cumulative and the court's finding in Petitioner's favor on one, some, or even most of the requirements does not reduce Petitioner's burden to show compliance with *all* requirements.”), we do not reach Defendant's additional argument on appeal.

### **Conclusion**



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Accordingly, for the foregoing reasons, the trial court's Order denying Defendant's Petition seeking early termination from the sex offender registry is affirmed.

AFFIRMED.

Judges TYSON and BROOK concur.

Report per Rule 30(e).